

## REMARKS

This is a full and timely response to the non-final Office Action of May 17, 2004.

Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Second Response, claims 1-30 are pending in this application.

Claims 1, 9-18, 21, and 22 are directly amended herein, and claims 23-30 are newly added. It is believed that the foregoing amendments add no new matter to the present application.

### Response to §103 Rejections

In order for a claim to be properly rejected under 35 U.S.C. §103, the combined teachings of the prior art references must suggest all features of the claimed invention to one of ordinary skill in the art. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

### Claim 1

Claim 1 presently stands rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Kinjo* (U.S. Patent No. 6,445,819) and *Hillebrand* (U.S. Patent No. 6,571,003). Claim 1 reads as follows:

1. An automatic image enhancement system, comprising:  
memory for storing digital data that defines a graphical image;  
a face detector configured to analyze said digital data and to automatically identify facial data within said digital data stored in said memory; and  
an image enhancer configured to analyze said facial data identified by said face detector and to automatically identify a portion of said facial data that defines a particular facial feature, said image enhancer further configured to automatically manipulate said portion for enhancing an appearance of said facial feature within said graphical image, *wherein said image enhancer is configured to initiate, without user intervention, manipulation of said portion for enhancing said appearance in response to identification of said portion by said image enhancer.* (Emphasis added).

Applicant respectfully asserts that *Kinjo* in combination with *Hillebrand* is inadequate to suggest at least the features of claim 1 highlighted hereinabove. Thus, the 35 U.S.C. §103 rejection of claim 1 is improper.

In this regard, it is alleged in the Office Action that *Kinjo* discloses several of the features of pending claim 1. However, it is candidly admitted that *Kinjo* fails to disclose “automatically identifying a portion of said facial data that defines a particular facial feature and automatically enhancing an appearance of said facial feature within said graphical image.” It is then apparently alleged that such features are disclosed by *Hillebrand*.

It appears that *Hillebrand* discloses a system for detecting facial defects. *Hillebrand* teaches that, after a defect is detected, a controller 200 and display 108 “may generate a simulated image showing an improvement and/or worsening to the defect areas.” Column 11, lines 46-49. However, it appears that *Hillebrand* suggests initiating the display of such “improvement” based on user intervention. In particular, *Hillebrand* specifically teaches that “Simulating improvements may be useful when the operator is recommending a treatment using a product which eliminates and/or hides skin defects to show the analyzed person the potential benefits of the product(s).” Column 11, lines 53-57. Such a section of *Hillebrand* suggests that display of the “improvement” is to be initiated based on whether a user is recommending a treatment product and possibly which treatment product is being recommended. *Hillebrand* further teaches that:

“The program begins at step 1502 where ***the operator enters a magnitude for defect improvement via the input device 212***. For example, if the overall percentile is determined to be the fortieth percentile, then the operator may choose to simulate an improvement of ten percentile points to create an ‘average’ fiftieth percentile image.” Column 12, lines 4-9. (Emphasis added).

Thus, *Hillebrand* fails to teach and, in fact, teaches against “wherein said image enhancer is configured to initiate, ***without user intervention***, manipulation of said portion for enhancing said appearance in response to identification of said portion by said image enhancer,” as

described by claim 1, as amended. (Emphasis added). A reference “teaches away” from the claimed invention and should not be used to reject the claimed invention under §103 “when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 2 F.3d 551, 31 U.S.P.Q.2d 1130, 1131 (Fed. Cir. 1994).

For at least the above reasons, Applicant asserts that the combination of *Kinjo* and *Hillebrand* fails to suggest at least the features of claim 1 highlighted above. Accordingly, the 35 U.S.C. §103 rejection of claim 1 should be withdrawn.

### **Claims 2-8 and 23**

Claims 2-8 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Kinjo* and *Hillebrand*. Further, claim 23 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 2-8 and 23 contain all features of their respective independent claim 1. Since claim 1 should be allowed, as argued hereinabove, pending dependent claims 2-8 and 23 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### Claim 9

Claim 9 presently stands rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Kinjo* and *Hillebrand*. Claim 9 reads as follows:

9. An automatic image enhancement system, comprising:  
means for storing digital data that defines a graphical image;  
face detecting means for analyzing said digital data and for  
automatically identifying facial data within said digital data stored in said  
storing means; and  
image enhancing means for analyzing said facial data identified by said  
face detecting means, for automatically identifying a portion of said facial data  
that defines a particular facial feature, and for *automatically manipulating,*  
*upon identification of said portion by said image enhancing means, said*  
*portion to enhance an appearance of said facial feature within said*  
*graphical image.* (Emphasis added).

As described above, *Hillebrand* teaches a system that enhances a facial image. However, for at least the reasons set forth above in the arguments for allowance of pending claim 1, Applicant asserts that such enhancement is apparently based on user intervention once the facial image has been detected. Thus, *Hillebrand* fails to suggest and, in fact, teaches against automatically manipulating a portion of facial data defining a particular facial feature “upon identification of said portion by said image enhancing means,” as described by claim 9. Further, Applicant asserts that the foregoing deficiency in *Hillebrand* is not satisfied by *Kinjo*. Accordingly, Applicant respectfully asserts that the alleged combination of *Kinjo* and *Hillebrand* fails to suggest each feature of claim 9, as amended, and the 35 U.S.C. §103 rejection of this claim should, therefore, be withdrawn.

### **Claim 10**

Claim 10 presently stands rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Kinjo* and *Hillebrand*. Claim 10 reads as follows:

10. A method for enhancing graphical images, comprising:  
receiving digital data defining a graphical image;  
automatically detecting facial data within said digital data;  
searching said facial data for data that defines a particular facial feature;  
automatically identifying, based on said searching step, a set of data defining said particular facial feature; and  
*automatically manipulating said set of data in response to said identifying, wherein said manipulating is initiated without user intervention.*  
(Emphasis added).

For at least the reasons set forth hereinabove in the arguments for allowance of claim 1, Applicant respectfully asserts that the cited art fails to suggest at least the features of claim 10 highlighted above. Accordingly, the 35 U.S.C. §103 rejection of claim 10, as amended, should be withdrawn.

### **Claims 11-16 and 25**

Claims 11-16 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Kinjo* and *Hillebrand*. Further, claim 25 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 11-16 and 25 contain all features of their respective independent claim 10. Since claim 10 should be allowed, as argued hereinabove, pending dependent claims 11-16 and 25 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### **Claim 18**

Claim 18 presently stands rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Kinjo* and *Hillebrand*. Claim 18 reads as follows:

18. An automatic image enhancing system, comprising:
  - memory configured to store digital data representative of a graphical image;
  - a face detector configured to automatically identify facial data in said digital data; and
  - an image enhancer configured to automatically locate a portion of said facial data defining a skin blemish, *wherein said image enhancer is further configured to automatically manipulate, upon locating said portion, said portion for enhancing an appearance of said skin blemish within said graphical image.* (Emphasis added).

For at least the reasons set forth hereinabove in the arguments for allowance of claim 9, Applicant respectfully asserts that the cited art fails to suggest at least the features of claim 18 highlighted above. Accordingly, the 35 U.S.C. §103 rejection of claim 18, as amended, should be withdrawn.

### **Claims 19, 20, and 26**

Claims 19 and 20 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Kinjo* and *Hillebrand*. Further, claim 26 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 19, 20, and 26 contain all features of their respective independent claim 18. Since claim 18 should be allowed, as argued hereinabove, pending dependent claims 19, 20, and 26 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### **Claim 21**

Claim 21 presently stands rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Kinjo* and *Hillebrand*. Claim 21 reads as follows:

21. An automatic image enhancing method, comprising:  
storing digital data representative of a graphical image;  
automatically identifying facial data in said digital data;  
automatically locating a portion of said facial data defining a skin blemish; and

*manipulating said portion for enhancing an appearance of said blemish within said graphical image, wherein said manipulating is automatically initiated based on said locating.* (Emphasis added).

For at least the reasons set forth hereinabove in the arguments for allowance of claims 1 and 9, Applicant respectfully asserts that the cited art fails to suggest at least the features of claim 21 highlighted above. Accordingly, the 35 U.S.C. §103 rejection of claim 21, as amended, should be withdrawn.

### **Claims 22, 23, and 27**

Claims 22 and 23 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Kinjo* and *Hillebrand*. Further, claim 27 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 22, 23, and 27 contain all features of their respective independent claim 21. Since claim 21 should be allowed, as argued hereinabove, pending dependent claims 22, 23, and 27 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### **Claim 24**

Claim 24 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claim 24 contains all features of its independent claim 9. Since claim 9 should be allowed, as argued hereinabove, pending dependent claim 24 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### **Claim 28**

Claim 28 has been newly added via the amendments set forth herein. Claim 28 presently reads as follows:

28. An automatic image enhancement system, comprising:  
memory for storing digital data that defines a graphical image, said  
graphical image containing a plurality of faces;  
a face detector configured to detect each of said faces; and  
an image enhancer configured to analyze said faces, said image  
enhancer further configured to automatically detect and enhance at least one  
respective facial feature in each of said faces.

Applicant respectfully asserts that the cited art fails to disclose or suggest each of the above features of pending claim 28. Thus, claim 28 is allowable.

### **Claim 29**

Claim 29 has been newly added via the amendments set forth herein. Claim 29 presently reads as follows:

29. An automatic image enhancing method, comprising:  
storing digital data that defines a graphical image;  
automatically detecting a plurality of faces in said graphical image;  
automatically analyzing said faces to detect at least one respective facial feature in each of said faces; and  
automatically enhancing, based on said analyzing, at least one respective facial feature in each of said faces.

Applicant respectfully asserts that the cited art fails to disclose or suggest each of the above features of pending claim 29. Thus, claim 29 is allowable.

### **Claim 30**

Claim 30 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claim 30 contains all features of its independent claim 29. Since claim 29 should be allowed, as argued hereinabove, pending dependent claim 30 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

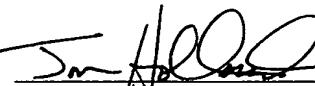
**CONCLUSION**

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER &  
RISLEY, L.L.P.**

By:

  
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Jon E. Holland  
Reg. No. 41,077  
(256) 704-3900 Ext. 103

Hewlett-Packard Development Company, L.P.  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, Colorado 80527-2400